

**Introduced by Senator Pan**

February 27, 2015

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An act to amend Section 3562 of the Government Code, relating to public postsecondary education.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 686, as introduced, Pan. Public postsecondary education: Higher Education Employer-Employee Relations Act.

Existing law, known as the Higher Education Employer-Employee Relations Act, contains provisions relating to employer-employee relations between the state and the employees of state institutions of higher education, including the University of California and the California State University, as well as the Hastings College of the Law. These provisions assign major responsibilities for implementation to the Public Employment Relations Board.

Under the act, an "employee" or "higher education employee" is defined as any employee of the Regents of the University of California, the Directors of the Hastings College of the Law, or the Trustees of the California State University. The act authorizes the board to find that student employees whose employment is contingent on their status as students are employees covered by the act only if the services they provide are unrelated to their educational objectives, or that those educational objectives are subordinate to the services they perform and that coverage under this act would further the purposes of the act.

This bill would provide that the definition of "employee" or "higher education employee" also includes a supervisory employee employed as a sworn peace officer by the University of California or the Hastings College of Law. The bill would also make nonsubstantive changes to a definition in the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 3562 of the Government Code is amended  
2     to read:  
3     3562. As used in this chapter:  
4     (a) “Arbitration” means a method of resolving a rights dispute  
5     under which the parties to a controversy must accept the award of  
6     a third party.  
7     (b) “Board” means the Public Employment Relations Board  
8     established pursuant to Section 3513.  
9     (c) “Certified organization” means an employee organization  
10    that has been certified by the board as the exclusive representative  
11    of the employees in an appropriate unit after a proceeding under  
12    Article 5 (commencing with Section 3573).  
13    (d) “Confidential employee” means any employee who is  
14    required to develop or present management positions with respect  
15    to meeting and conferring or whose duties normally require access  
16    to confidential information which contributes significantly to the  
17    development of those management positions.  
18    (e) (1) “Employee” or “higher education employee” means any  
19    employee of the Regents of the University of California, the  
20    Directors of the Hastings College of the Law, or the Trustees of  
21    the California State University. However, managerial and  
22    confidential employees and employees whose principal place of  
23    employment is outside the State of California at a worksite with  
24    100 or fewer employees shall be excluded from coverage under  
25    this chapter. The board may find student employees whose  
26    employment is contingent on their status as students are employees  
27    only if the services they provide are unrelated to their educational  
28    objectives, or that those educational objectives are subordinate to  
29    the services they perform and that coverage under this chapter  
30    would further the purposes of this chapter.  
31    (2) *Subject to Section 3580.5, “employee” or “higher education*  
32    *employee” also means a supervisory employee employed as a*  
33    *sworn peace officer by the University of California or the Hastings*  
34    *College of Law.*

(f) (1) “Employee organization” means any organization of any kind in which higher education employees participate and that exists for the purpose, in whole or in part, of dealing with higher education employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment of employees. An organization that represents one or more employees whose principal worksite is located outside the State of California is an employee organization only if it has filed with the board and with the employer a statement agreeing, in consideration of obtaining the benefits of status as an employee organization pursuant to this chapter, to submit to the jurisdiction of the board. The board shall promulgate the form of the statement.

(2) “Employee organization” shall also include any person that an employee organization authorizes to act on its behalf. An academic senate, or other similar academic bodies, or divisions thereof, shall not be considered employee organizations for the purposes of this chapter.

(g) “Employer” or “higher education employer” means the regents in the case of the University of California, the directors in the case of the Hastings College of the Law, and the trustees in the case of the California State University, including any person acting as an agent of an employer.

(h) “Employer representative” means any person or persons authorized to act on behalf of the employer.

(i) “Exclusive representative” means any recognized or certified employee organization or person it authorizes to act on its behalf.

(j) “Impasse” means ~~that the parties have reached~~ a point in meeting and conferring at which ~~their~~ *the* differences in *the* positions *of the parties* are such that further meetings would be futile.

(k) “Managerial employee” means any employee having significant responsibilities for formulating or administering policies and programs. No employee or group of employees shall be deemed to be managerial employees solely because the employee or group of employees participates in decisions with respect to courses, curriculum, personnel, and other matters of educational policy. A department chair or head of a similar academic unit or program who performs the foregoing duties primarily on behalf of the members of the academic unit or program shall not be deemed a managerial employee solely because of those duties.

1 (l) “Mediation” means the efforts of a third person, or persons,  
2 functioning as intermediaries, to assist the parties in reaching a  
3 voluntary resolution to an impasse.

4 (m) “Meet and confer” means the performance of the mutual  
5 obligation of the higher education employer and the exclusive  
6 representative of its employees to meet at reasonable times and to  
7 confer in good faith with respect to matters within the scope of  
8 representation and to endeavor to reach agreement on matters  
9 within the scope of representation. The process shall include  
10 adequate time for the resolution of impasses. If agreement is  
11 reached between representatives of the higher education employer  
12 and the exclusive representative, they shall jointly prepare a written  
13 memorandum of the understanding, which shall be presented to  
14 the higher education employer for concurrence. However, these  
15 obligations shall not compel either party to agree to any proposal  
16 or require the making of a concession.

17 (n) “Person” means one or more individuals, organizations,  
18 associations, corporations, boards, committees, commissions,  
19 agencies, or their representatives.

20 (o) “Professional employee” means:

21 (1) Any employee engaged in work: (A) predominantly  
22 intellectual and varied in character as opposed to routine mental,  
23 manual, mechanical, or physical work; (B) involving the consistent  
24 exercise of discretion and judgment in its performance; (C) of a  
25 character so that the output produced or the result accomplished  
26 cannot be standardized in relation to a given period of time; and  
27 (D) requiring knowledge of an advanced type in a field of science  
28 or learning customarily acquired by a prolonged course of  
29 specialized intellectual instruction and study in an institution of  
30 higher learning or a hospital, as distinguished from a general  
31 academic education or from an apprenticeship or from training in  
32 the performance of routine mental, manual, or physical processes.

33 (2) Any employee who: (A) has completed the courses of  
34 specialized intellectual instruction and study described in  
35 subparagraph (D) of paragraph (1), and (B) is performing related  
36 work under the supervision of a professional person to qualify  
37 himself or herself to become a professional employee as defined  
38 in paragraph (1).

39 (p) “Recognized organization” means an employee organization  
40 that has been recognized by an employer as the exclusive

1 representative of the employees in an appropriate unit pursuant to  
2 Article 5 (commencing with Section 3573).

3 (q) (1) For purposes of the University of California only, “scope  
4 of representation” means, and is limited to, wages, hours of  
5 employment, and other terms and conditions of employment. The  
6 scope of representation shall not include any of the following:

7 (A) Consideration of the merits, necessity, or organization of  
8 any service, activity, or program established by law or resolution  
9 of the regents or the directors, except for the terms and conditions  
10 of employment of employees who may be affected thereby.

11 (B) The amount of any fees that are not a term or condition of  
12 employment.

13 (C) Admission requirements for students, conditions for the  
14 award of certificates and degrees to students, and the content and  
15 supervision of courses, curricula, and research programs, as those  
16 terms are intended by the standing orders of the regents or the  
17 directors.

18 (D) Procedures and policies to be used for the appointment,  
19 promotion, and tenure of members of the academic senate, the  
20 procedures to be used for the evaluation of the members of the  
21 academic senate, and the procedures for processing grievances of  
22 members of the academic senate. The exclusive representative of  
23 members of the academic senate shall have the right to consult  
24 and be consulted on matters excluded from the scope of  
25 representation pursuant to this subparagraph. If the academic senate  
26 determines that any matter in this subparagraph should be within  
27 the scope of representation, or if any matter in this subparagraph  
28 is withdrawn from the responsibility of the academic senate, the  
29 matter shall be within the scope of representation.

30 (2) All matters not within the scope of representation are  
31 reserved to the employer and may not be subject to meeting and  
32 conferring, provided that nothing herein may be construed to limit  
33 the right of the employer to consult with any employees or  
34 employee organization on any matter outside the scope of  
35 representation.

36 (r) (1) For purposes of the California State University only,  
37 “scope of representation” means, and is limited to, wages, hours  
38 of employment, and other terms and conditions of employment.  
39 The scope of representation shall not include:

1 (A) Consideration of the merits, necessity, or organization of  
2 any service, activity, or program established by statute or  
3 regulations adopted by the trustees, except for the terms and  
4 conditions of employment of employees who may be affected  
5 thereby.

6 (B) The amount of any student fees that are not a term or  
7 condition of employment.

8 (C) Admission requirements for students, conditions for the  
9 award of certificates and degrees to students, and the content and  
10 conduct of courses, curricula, and research programs.

11 (D) Criteria and standards to be used for the appointment,  
12 promotion, evaluation, and tenure of academic employees, which  
13 shall be the joint responsibility of the academic senate and the  
14 trustees. The exclusive representative shall have the right to consult  
15 and be consulted on matters excluded from the scope of  
16 representation pursuant to this subparagraph. If the trustees  
17 withdraw any matter in this subparagraph from the responsibility  
18 of the academic senate, the matter shall be within the scope of  
19 representation.

20 (E) The amount of rental rates for housing charged to California  
21 State University employees.

22 (2) All matters not within the scope of representation are  
23 reserved to the employer, and may not be subject to meeting and  
24 conferring, provided that nothing herein may be construed to limit  
25 the right of the employer to consult with any employees or  
26 employee organization on any matter outside the scope of  
27 representation.